

REMARKS

By this amendment, claims 2-18 and 20-38 are pending, in which claim 38 is currently amended. No new matter is introduced.

The Office Action mailed June 17, 2005 rejected claims 2-6, 9, 20-24, 27, 37, and 38 under 35 U.S.C. § 102(e) as anticipated by *Miles et al.* (U.S. 6,665,495), claims 7, 8, 10, 11, 25, 26, 28 and 29 as obvious under 35 U.S.C. § 103(a) based on *Miles et al.* in view of *Gai et al.* (U.S. 6,167,445), claims 12, 13, 30 and 31 as obvious under 35 U.S.C. § 103(a) based on *Miles et al.* in view of *Bullock et al.* (U.S. 6,631,414), and claims 14-18 and 32-36 as obvious under 35 U.S.C. § 103(a) based on *Miles et al.* in view of *Bowman-Amuah* (U.S. 6,442,547).

Claim 38 is amended to resolve a discovered informality.

37 CFR § 1.131(a) states:

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT article 21(2) is the earlier of its publication date or date that it is effective as a reference under 35 U.S.C. 102(e).

37 CFR § 1.131(b) states:

The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or **conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application.** Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

Applicant respectfully submits that the Declaration under 37 CFR § 1.131 by one of the inventors of the present application (with exhibits) filed herewith satisfies the requirements of 37

CFR § 1.131(b) to establish invention of the subject matter of all pending claims prior to the effective date, at least of the *Miles et al.* reference. As attested to by the Declaration under 37 CFR § 1.131, the inventor conceived of his invention in this country long prior to October 27, 2000, the effective filing date of *Miles et al.*, as evidenced by Exhibit A (attached to the declaration).

The inventor attests that, prior to the effective date of October 27, 2000, and through November 28, 2000, he collaborated with his co-inventors and an attorney at least by telephone and email in the attorney's preparation of drafts of the above-referenced patent application, to review the drafts and suggest revisions, as evidenced at least by Exhibits B – L. Additionally, the present application was filed on November 28, 2000, as evidenced by the Updated Filing Receipt (Exhibit M). Thus, Applicants respectfully submit that the requirement of prior conception and the requirement of due diligence, from prior to the effective filing date of a reference to the date of filing, is met with regard to *Miles et al.* in accordance with 37 CFR § 1.131.

Thus, Applicants respectfully request the withdrawal of the rejections of all pending claims.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 425-8501 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

DITTHAVONG & CARLSON, P.C.

September 19, 2005

Date

Margo Livesay

Margo Livesay, Ph.D.
Attorney/Agent for Applicant(s)
Reg. No. 41,946

10507 Braddock Road
Suite A
Fairfax, VA 22032
Tel. (703) 425-8501
Fax. (703) 425-8518